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E-Filed May 1, 2006

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:	)	BK-S-06-10725-LBR
	)	Chapter 11
USA COMMERCIAL MORTGAGE COMPANY	)	
Debtor	)	
In re:	)	BK-S-06-10726-LBR
	)	Chapter 11
USA CAPITAL REALTY ADVISORS, LLC,	)	
Debtor	)	
In re:	)	BK-S-06-10727-LBR
	)	Chapter 11
USA CAPITAL DIVERSIFIED TRUST DEED	)	
FUND, LLC,	)	
Debtor	)	
In re:	)	BK-S-06-10728-LBR
	)	Chapter 11
USA CAPITAL FIRST TRUST DEED FUND,	)	
LLC,	)	
Debtor	)	
In re:	)	BK-S-06-10729-LBR
	)	Chapter 11
USA SECURITIES, LLC,	)	
Debtor	)	
Affects:	)	
<input checked="" type="checkbox"/> All Debtors	)	
<input type="checkbox"/> USA Commercial Mortgage Co.	)	
<input type="checkbox"/> USA Securities, LLC	)	
<input type="checkbox"/> USA Capital Realty Advisors, LLC	)	DATE: 5/3/06
<input type="checkbox"/> USA Capital Diversified Trust Deed	)	TIME: 9:30 AM
<input type="checkbox"/> USA First Trust Deed Fund, LLC	)	

OPPOSITION TO MOTION FOR ORDER UNDER 11 USC §§ 105(a), 345, AND  
363 APPROVING DEBTORS' PROPOSED CASH MANAGEMENT PROCEDURES  
AND INTERIM USE OF CASH IN ACCORDANCE WITH PROPOSED CASH BUDGET  
AND COUNTERMOTION FOR SEQUESTERING OR ALTERNATIVELY FOR RELEASE  
OF FUNDS AND FOR REVOCATION OF POWER OF ATTORNEY

COMES NOW HANS J. PRAKELT, DR. CAROLE TALAN, and RICHARD  
WILLIAMS (hereafter "PRAKELT, TALAN, WILLIAMS"), by and through their attorney,  
ROBERT C. LEPOME, ESQ., and file his Opposition to Debtor's Motion for Order Under  
11 USC §§ 105(a), 345, and 363 Approving Debtors' Proposed Cash Management  
Procedures and Interim Use of Cash in Accordance with Proposed Cash Budget.

This Opposition and Countermotion for Sequestering or Alternatively for Release  
of Funds and for Revocation of Power of Attorney is based upon the Points and  
Authorities attached hereto.

Robert C. LePome, Esq.

/s/ Robert C. LePome, Esq

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POINTS AND AUTHORITIES

Facts

PRAKELT, TALAN, WILLIAMS are three investors who share a common desire  
to Object to the Motions of Debtors. They are related as significant others or close

friends. They invested in Notes Secured by Deeds of Trust on Nevada Real Property. The Debtors collectively had fiduciary duties which included obtaining suitable borrowers with real property appraised in excess of the proposed loans and with a reasonable plan to repay the loans. Debtors charged origination fees or "points" to the borrowers and these origination fees or "points" are the primary income of Debtors. At no time were Debtors authorized to co-mingle with or use any funds intended for investment.

Debtors were operating under a Power of Attorney which allowed them to collect the payments from the borrowers and to pay said funds to PRAKELT, TALAN, WILLIAMS. PRAKELT, TALAN, WILLIAMS hereby revokes the Power of Attorney. Once the Notes are released to PRAKELT, TALAN, WILLIAMS, they will either collect them themselves or place them for collection. This "collection" is a ministerial act but with fiduciary duties. Debtors have no legal interest in the funds collected from borrowers. Debtors are not the Payees of the Notes nor are they the beneficiaries of the Deeds of Trust.

Debtors receipted for approximately \$500,000.00 of PRAKELT, TALAN, WILLIAMS's money and brokered all funds to borrowers. The detail is supplied on Exhibits "A", "B" and "C" hereto.

#### The Law

Debtors and their affiliates are licensed by the State of Nevada Financial Institution Division as mortgage brokers or mortgage agents under NRS 645B. Escrow

Accounts are required under NRS 645B.165 through 175 and commingling is prohibited under NRS 645B.180.

Debtors serve as a collection agent for benefit of the Movant under a power of Attorney.

11 USC 541(b)(1) states that: "Property of the estate does not include any power that the debtor may exercise solely for the benefit of an entity other than the debtor."

#### Argument

PRAKELT, TALAN, WILLIAMS is the owner of the various Notes Secured by Deed of Trust that have been recorded showing an Assignment from Debtors to PRAKELT, TALAN, WILLIAMS in all or a proportionate amount of each Note and Deed of Trust. These Notes and Deeds of Trust are clearly not property of the estate and indeed the Debtor does not appear to contend otherwise.

The Debtor operated under a Power of Attorney which allows them to collect the payments from PRAKELT, TALAN, WILLIAMS and forward PRAKELT, TALAN, WILLIAMS their interest. It appears that this master-servant relationship has been breached. To the extent that Debtors have breached their fiduciary duties, they should be disqualified as servicing agents or indeed, as Debtors-in-Possession.

The Notes Secured by Deeds of Trust being serviced are owned by PRAKELT, TALAN, WILLIAMS and should be released to PRAKELT, TALAN, WILLIAMS. A summary of the Notes Secured by Deeds of Trust totaling \$500,000.00 are

summarized in Exhibits "A", "B" and "C" hereto. This will cause no financial loss to Debtors since the primary income of Debtors is the substantial loan origination fees or "Points" earned at the funding of the loan not the minuscule servicing fees after the loan is funded. Indeed, replacement of the servicing agent will reduce the salary requirement of the collection department of Debtor which is presently being overwhelmed with telephone calls from investors and with borrowers who doubt whether late payments or no payments will be pursued by a bankrupt collection agent who has no incentive or financial interest in the instruments.

#### Conclusion

The Power of Attorney to continue collecting and to make loans for the benefit of PRAKELT, TALAN, WILLIAMS has been terminated and the Court should confirm such termination.

Debtors' Motion should be denied and the funds, Notes and Deeds of Trust should be released to their owners.

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CERTIFICATE OF SERVICE

I, Susan Stanton, hereby certify that a true and correct copy of the foregoing was forwarded to:

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by electronic service on the 1st day of May, 2006 and by regular mail to:

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on the 1<sup>st</sup> day of May, 2006.

/s/ Susan Stanton  
Employee of Robert C. LePome, Esq.